

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 Michael Foley,

Case No.: 2:16-cv-01871-JAD-VCF

4           Plaintiff

**Order Granting Motion to Extend Time**

5 v.

[ECF No. 51]

6 Kenneth Graham, et al.,

7           Defendants

8           After missing his deadline to oppose defendants' motion to dismiss,<sup>1</sup> pro se plaintiff  
9 Michael Foley now moves to extend that deadline so he can file an opposition.<sup>2</sup> Defendants  
10 oppose that request and ask the court to grant their motion to dismiss as uncontested.<sup>3</sup>

11           When a party moves to extend a deadline after that deadline has already passed, as Foley  
12 does here, the movant must "demonstrate[] that the failure to file the motion [to extend the  
13 deadline] before the deadline expired was the result of excusable neglect."<sup>4</sup> "Excusable neglect  
14 'encompasses situations in which the failure to comply with a filing deadline is attributable to  
15 negligence,' and includes 'omissions caused by carelessness.'"<sup>5</sup> "The determination of whether  
16 neglect is excusable 'is at bottom an equitable one, taking account of all relevant circumstances  
17 surrounding the party's omission.'"<sup>6</sup> "To determine when neglect is excusable, we conduct the  
18 equitable analysis specified in *Pioneer* [*Investment Services Company v. Brunswick Associates*

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20 <sup>1</sup> ECF No. 47.

21 <sup>2</sup> ECF No. 51.

22 <sup>3</sup> ECF No. 52.

<sup>4</sup> L.R. IA 6-1(a).

<sup>5</sup> *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 394–95 (1993)),

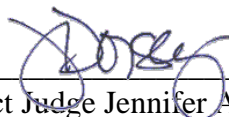
<sup>6</sup> *Lemoge*, 587 F.3d at 1192 (quoting *Pioneer*, 507 U.S. at 395).

1 *Ltd.*] by examining ‘at least four factors: (1) the danger of prejudice to the opposing party; (2) the  
2 length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and  
3 (4) whether the movant acted in good faith.’”<sup>7</sup>

4         Foley states that his failure to timely respond was the result of excusable neglect because  
5 he was in the middle of moving out of his home and was only “recently . . . able to use  
6 his computer since having completed his move.” Weighing the *Pioneer* factors, I find that Foley  
7 has demonstrated excusable neglect for failing to move to extend the deadline before it expired.  
8 So I grant his motion and extend his deadline to respond to the defendants’ motion to dismiss to  
9 April 3, 2020.

10         IT IS THEREFORE ORDERED that Foley’s motion to extend the deadline to respond to  
11 the defendants’ motion to dismiss [ECF No. 51] is **GRANTED**. **Foley must file his response**  
12 **to that motion [ECF No. 47] by April 3, 2020, or the motion will be granted as unopposed.**

13         Dated: March 13, 2020

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16 U.S. District Judge Jennifer A. Dorsey  
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<sup>7</sup> *Id.* (quoting *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir. 2000)).